

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JAMES EAVES #504262,

Petitioner,

Case No. 1:06-CV-794

v.

HON. ROBERT HOLMES BELL

CARMEN PALMER,

Respondent.

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**ORDER APPROVING AND ADOPTING  
REPORT AND RECOMMENDATION AND  
DENYING PETITION FOR WRIT OF HABEAS CORPUS**

On November 30, 2009, Magistrate Judge Ellen S. Carmody issued a Report and Recommendation (“R&R”) recommending that Petitioner James Eaves’s § 2254 petition for writ of habeas corpus be denied. (Dkt. No. 32.) This matter is before the Court on Petitioner’s objections to the R&R. (Dkt. No. 37.)

This Court is required to make a de novo review upon the record of those portions of the R&R to which specific objections have been made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see also Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995) (“[A] general objection to a magistrate’s report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed. The objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious.”). Although the Magistrate Judge’s R&R is reviewed de novo, this Court must review the state

court proceedings consistent with the standards set forth in 28 U.S.C. § 2254.

Petitioner objects to the Magistrate Judge's conclusion that he failed to present his claim as a violation of federal law, to her conclusion that he failed to exhaust his federal claims in state court, and to her alternative recommendation that his petition should be denied on the merits because there was no evidence on the record that his plea was not voluntary, and because the denial of a motion to withdraw a no-contest plea cannot form the basis for habeas relief. Petitioner's objections are based upon a misunderstanding of the applicable law. Petitioner has not identified any cognizable error in the Magistrate Judge's analysis or in her application of the pertinent law. Upon de novo review, the Court agrees with Magistrate Judge's recommendation and will accordingly adopt the R&R.

An appeal may not be taken from a final order in a habeas case unless a certificate of appealability is issued. 28 U.S.C. § 2253(c)(1). A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). If an appeal is filed, the district judge who ruled on the habeas petition must either issue a certificate of appealability or state why a certificate should not issue. Fed. R. App. P. 22(b). The district court must decide whether to issue a certificate of appealability at the time of denial of habeas relief. Rule 11(a) of the Rules Governing § 2254 Cases. Because Petitioner has failed to make a substantial showing of the denial of a constitutional right, a certificate of appealability will be denied.

**IT IS HEREBY ORDERED** that Petitioner's objections to the Report and

Recommendation of the Magistrate Judge (Dkt. No. 37) are **OVERRULED**.

**IT IS FURTHER ORDERED** that the November 3, 2009, Report and Recommendation of the Magistrate Judge (Dkt. No. 32) is **APPROVED** and **ADOPTED** as the opinion of the Court.

**IT IS FURTHER ORDERED** that Petitioner's petition for writ of habeas corpus (Dkt. No. 1) is **DENIED**.

**IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473 (2000).

Dated: March 12, 2010

/s/ Robert Holmes Bell  
ROBERT HOLMES BELL  
UNITED STATES DISTRICT JUDGE